

DEPARTMENT OF CORRECTIONAL SERVICES
SPECIAL INVESTIGATIVE COMMITTEE
LR34 (2015)

REPORT TO THE LEGISLATURE

December 22, 2016

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INTRODUCTION

In 2014, when the Nebraska Legislature passed Legislative Resolution 424 (“LR424”), the Department of Correctional Services Special Investigative Committee (“LR424 Committee” or “LR34 Committee”) was initially created. The original purpose for establishing the LR424 Committee was to examine the circumstances of Nikko Jenkins’ confinement and release. During the summer of 2014, the scope of the LR424 Committee’s work was broadened to include an investigation into the miscalculation of sentences when it was revealed that several inmates were released early from the Nebraska Department of Correctional Services (“the Department”). The examination of the circumstances of Nikko Jenkins’ confinement and release also led to a closer examination of overcrowding within the Department, the use of solitary confinement and the mental health treatment and programming available to inmates. As a result of the investigation, the LR424 Committee issued a report December 15, 2014, which included its conclusions and sixteen recommendations.

In addition to the work of the LR424 Committee, the three branches of state government invited the Council of State Governments (“CSG”) to provide recommendations to alleviate overcrowding and reduce recidivism. On January 14, 2015, CSG issued a report outlining a transformative approach to the criminal justice system intended to alleviate overcrowding, reduce recidivism, and better prepare inmates for life after release.

In 2015, the Legislature passed Legislative Resolution 34 (“LR34”) to reconstitute the Department of Correctional Services Special Investigative Committee for the purposes of assessing the Department’s progress on the recommendations made by the LR424 Committee.

As the LR34 Committee has undertaken its work, it has remained mindful that the Nebraska Constitution places responsibility for running the Department with the executive branch. Nevertheless, the Legislature is charged with providing oversight of the executive branch of government and this committee has attempted to discharge that function in a robust yet respectful manner. It is important to note that the Legislature’s appointment of the LR34 Committee was an extraordinary measure brought about by the problems exposed by the LR424 Committee.

The LR34 Committee held ten hearings. Each of the hearings focused on specific topics of concern: staffing, overcrowding, mental and behavioral health treatment, programming, and restrictive housing. This report includes the LR34 Committee’s findings and recommendations

on each of those topics.

The recommendations in this report draw on previous recommendations from CSG's Justice Program Assessment, the VERA Report, the Inspector General of the Nebraska Correctional System and others.

While each of the LR34 Committee hearings focused on a particular topic, it became clear to the LR34 Committee that the problems presented with each subject are directly related to the other and, without exception, the lack of sufficient resources was the cause common to all. For example, overcrowding, which remains an acute problem at the Department, is directly related to the failure of inmates to have completed their programming prior to their parole eligibility date. The failure to have inmates complete programming before their parole eligibility date, in turn, is directly related to insufficient availability of programming, a resource issue. Finally, the failure to have inmates "parole ready" due to lack of programming required by the Parole Board, results in more inmates discharged from the Department without being first placed on parole, commonly referred to as "jamming out" without resources in place to become productive and stable members of society. Those who have not received appropriate programming and who jam out, in turn, are incarcerated longer and are more likely to reoffend, directly affecting public safety, increasing recidivism and exacerbating the overcrowding problem faced by the Department of Corrections. The absence of sufficient and appropriate programming was also identified as a reason for the increase in staff assaults over the last few years.

In order to increase program capacity, NDCS must properly assess and plan for appropriate staffing levels to fulfill this obligation. Creating a plan for appropriate staffing levels is not currently happening and should be a top priority for the Department. In order to accomplish this plan, NDCS budget requests must reflect actual needs, the Governor must support such a request and the Legislature must provide the necessary funding. Staffing directly relates to capacity for access to programming and access to mental and behavioral health treatment and thereby ultimately to recidivism which directly affects overcrowding.

Further, the absence of appropriate mental health care results in overuse of restrictive housing. Those who have not received proper mental health care prior to discharge are more likely to reoffend, directly affecting public safety, and once again, exacerbating the overcrowding situation at the Department when they are ultimately resentenced for their new offenses and

return to the Department. The absence of appropriate mental health care is, at the end of the day, a resource issue.

With the assistance of CSG, the State of Nebraska has made a policy pivot intended to address overcrowding and public safety by addressing the root cause of recidivism. With the implementation of the recommendations from CSG, Nebraska, like other states who have adopted CSG's Justice Reinvestment approach, has recognized that in order to reduce recidivism and thereby improve public safety and alleviate overcrowding, it is necessary that more inmates be paroled rather than jamming out. Parole affords an opportunity to supervise an inmate upon discharge during the months that they are at highest risk to reoffend. But to be parole eligible, inmates must complete necessary programming intended to address and modify the criminal behavior that resulted in their incarceration. Central to this approach to corrections is the initial investment in programming and appropriate mental health care.

CSG refers to the front end expenses as an "investment" because states who have implemented this approach realize savings in a reduction in recidivism which translates into better public safety and a reduction in the inmate population.

As this report herein states, the challenge facing the Department is two-fold. First, the Department has been without sufficient resources for several years leading to understaffing, low morale, inadequate programming and inadequate mental health care. Just getting the Department back to where it needs to be will require significant resources in the next legislative session. The second challenge comes from implementing the recommendations from CSG intended to reduce recidivism and thereby improve public safety and alleviate overcrowding. Making the upfront investment to implement the recommendations of CSG will also require a significant commitment of resources in the next legislative session.

The format of the report herein breaks down each of these interconnected issues and addresses them individually. The Committee's findings and conclusions, as well as the recommendations regarding each of these related topics, are set forth separately. The solution to solving the problems of the Department of Corrections is going to require an approach in which sufficient resources are devoted to addressing the individual problems at the Department. It is the Committee's considered opinion that if sufficient resources are devoted to the problems at the Department and appropriate leadership is provided by the executive branch, that understaffing issues can be resolved, morale at the Department improved, and recidivism rates

lowered with a resulting benefit to public safety and a reduction in the costs and concerns related to overcrowding.

Operations within the Department are the responsibility of the executive branch. Therefore, it must take the necessary steps outlined herein to address the staffing, programming and behavioral health issues prevalent in our correctional system. We believe the adoption of these recommendations to be paramount to the State's first responsibility to keep people safe. We also believe that the cost of fixing these problems will be in the tens to hundreds of millions of dollars and that such dollars are better spent in the areas outlined herein rather than just building a new prison to deal with overcrowding. Building a new prison will not address the underlying issues related to staff safety and sufficiency nor will it address the issues of making the inmates safer citizens upon release. Nor will it address recidivism rates or prison safety. The executive branch must instead request and fund the important and costly issues described herein.

The LR34 Committee members will continue to work with the Nebraska Department of Correctional Services and other stakeholders on these and other issues to promote public safety by ensuring correctional system accountability and offender accountability.

STAFFING

Scott Frakes was appointed Director of the Nebraska Department of Correctional Services (“NDCS” or “the Department”) by Governor Pete Ricketts in February 2015. Director Frakes immediately undertook several initiatives to help guide his efforts to bring stability to the Department and its prison facilities. Among those initiatives highlighted at the August 31, 2016, LR34 Committee hearing on staffing were exit interviews, a culture study, and a protective services staffing analysis.¹

Vacancies

- As of July 14, 2016, there were 198 protective service staff vacancies, 73 of which were to be filled by new hires upon their graduation from the Department’s training academy, and 125 of which had no one in line to fill.²
- According to a report from the Office of Inspector General of the Nebraska Correctional System, on June 14, 2016, there were 34 vacancies out of 161 behavioral and mental health positions at NDCS.³ Dr. Alice Mitwaruciu, the Department’s Behavioral Health Administrator, testified that the Department needs more psychologists than currently allocated; as of October 12, 2016, NDCS had a total of 23 psychologist positions, but only 11 were filled.⁴ In particular, according to Dr. Mitwaruciu, the Department needs additional psychologists to appropriately treat people in restrictive housing.⁵
 - **Finding:** It is difficult to know how many total positions are needed due to significant vacancies that currently exist.⁶

Turnover

- In FY2015 the Department had nearly a 24 percent agency wide turnover rate for all positions at all facilities, including the central office, with the turnover rate for protective service staff at all prison facilities at nearly 31 percent.⁷ Protective service staff include

¹ For a summary of hearings held by the LR34 Committee in 2015, including a list of testifiers at each hearing, see Appendix B, Document 1. For a summary of hearings held by the LR34 Committee in 2016, including a list of testifiers at each hearing, see Appendix B, Document 2. Hearing transcripts can also be found in Appendix B.

² Documents compiled for the LR34 Committee August 31, 2016 Public Hearing on Protective Services Staffing, page 1706. (“8/31/2016 public hearing documents” - Appendix C, Attachment 1) Also see LR34 Committee hearing transcript - Staffing (August 31, 2016), page 12 (Appendix B).

³ Office of Inspector General of the Nebraska Correctional System Report (2015/2016), page 16. (“OIG Report” or “Office of Inspector General Report” - Appendix C, Attachment 2)

⁴ Mitwaruciu testimony, 10/12/16 transcript, pages 167-168. (Appendix B)

⁵ Mitwaruciu testimony, 10/12/16 transcript, page 190. (Appendix B)

⁶ Dr. Randy Kohl (former NDCS Medical Director) testimony, 10/12/16 transcript, pages 71-72. (Appendix B)

⁷ 8/31/2016 public hearing documents, page 1650. (Appendix C, Attachment 1)

caseworkers, corporals, sergeants and correctional officers (entry level corrections custody staff).

- According to Director Frakes, as a rule of thumb, a 10 to 12 percent turnover rate for most organizations is healthy, however as the turnover rate approaches 15 percent it creates instability and management issues.⁸
- In FY2016 the Department lost 387 protective service staff and hired 400 new staff at a training cost of \$5,900 or higher per trainee.⁹

Prison Staffing Analysis

- Director Frakes requested assistance from the National Institute of Corrections (NIC) to identify and train a group of administrative staff to conduct a prison staffing analysis related to the protective service staff based on sound correctional practice using models from NIC.¹⁰
- The subsequent analysis by the NIC trained staff issued a draft report finding that, in addition to the 125 to 198 vacant positions as noted above, there was a need for 254 new positions at a cost of nearly \$12 million; revisions to the draft report which occurred upon review of the draft by the Director reduced the need to 138 positions at a cost of approximately \$6.5 million. The variance was explained during extensive questioning at the hearing regarding methods and process relied upon during the analysis.¹¹
- Although NDCS completed a staffing analysis for protective services staff, there is no measure of staffing needs as it pertains specifically to assessment and programming, according to NDCS Deputy Director for Programs Mike Rothwell.¹²
- An appropriation to NDCS in 2015 required the Department to complete “a needs assessment regarding behavioral and mental health treatment and staffing.”¹³ The process for conducting the protective services staffing analysis was entirely separate from the Behavioral Health Needs Assessment completed by the Department in December 2015.¹⁴
 - **Finding:** A comprehensive analysis of all staffing needs is necessary.

⁸ 8/31/2016 transcript, pages 15-16. (Appendix B)

⁹ 8/31/2016 transcript, page 10 and page 11. (Appendix B)

¹⁰ 8/31/2016 transcript, pages 42-43. (Appendix B)

¹¹ 8/31/2016 transcript, pages 42-77. (Appendix B)

¹² Rothwell testimony, LR34 Committee hearing transcript - Programming (October 28, 2016), page 56 (Appendix B)

¹³ LB657 (2015), Section 162

¹⁴ Behavioral Health Needs Assessment; Nebraska Department of Correctional Services (December 2015). (“NDCS Behavioral Health Needs Assessment” - Appendix C, Attachment 3)

Recommendation 1: The Committee recommends that NDCS complete a comprehensive staffing analysis by July 1, 2017. This should include an analysis of staffing needs for programming and assessment, an analysis of the behavioral health system staffing needs, and an analysis of administrative and support staff needed for all areas of the Department. The analysis should include specific positions needed, for all staffing areas, and should also include qualifications and training necessary for all positions.

Culture Study

- To improve the culture of NDCS among staff and to increase transparency, NDCS commissioned a department-wide culture study.¹⁵ A human resources specialist with the Nebraska Department of Administrative Services (“DAS”), Sharon Rues Pettid, led a team of staff who spent 9 months conducting surveys and interviewing NDCS employees. The results of the study were released in June 2016.¹⁶
- Because of staffing shortages, mandatory and voluntary overtime leads to 16 hour shifts.¹⁷ Staffing shortages also lead to staff performing duties for which they were not hired, such as caseworkers who also perform some security duties.¹⁸
- The Culture Study indicated 68 percent of the respondents were either dissatisfied or highly dissatisfied with their wages.¹⁹ Correctional officers are paid a flat \$15.80 per hour, whether newly hired or on the job for 10 years, a rate which is significantly less than correctional officers working in Douglas and Lancaster County jails.²⁰
- According to the Culture Study, current vacancies and understaffing, combined with efforts to increase program capacity, are exacerbating the staffing problems outlined in this report. Staff are being asked to perform multiple functions that fall outside their classification, meaning staff may not be adequately trained or adequately devoted to core functions of case management, assessment and program instruction.²¹
- Other issues related to morale are lack of staff engagement, favoritism, fear of retaliation from supervisors, and concern for personal safety.²²
 - **Finding:** While the Department has taken action in an attempt to improve

¹⁵ Nebraska Department of Correctional Services Culture Study - Part 1 (May 2016), page 1. (“NDCS Culture Study - Part 1” - Appendix C, Attachment 4a)

¹⁶ Paul Hammel, Omaha World-Herald, “Nebraska prison workers want better pay, chance to be heard, culture study finds” (June 2, 2016)

¹⁷ 8/31/2016 public hearing documents, pages 1788, 1793, and 1794. (Appendix C, Attachment 1)

¹⁸ 8/31/2016 transcript, pages 5-6. (Appendix B)

¹⁹ 8/31/2016 transcript, page 38. (Appendix B)

²⁰ 8/31/2016 transcript, pages 24-26. (Appendix B)

²¹ NDCS Culture Study - Part 1, page 10. (Appendix C, Attachment 4a)

²² 8/31/2016 transcript, page 17. (Appendix B)

morale, the number of staff vacancies and the turnover rate have not changed.²³

Safety

- Staff assaults in 2016 have significantly increased, when compared to recent years.²⁴
- Prison staff perceive a deterioration in the level of respect corrections officers are getting from the inmates which may be a result of the large number of inmates entering prison who have strong affiliations to security threat groups (gangs).²⁵
- According to Director Frakes, an additional factor related to inmate behavior is the lack of programming and other pro-social activities that if in place would manage behavior.²⁶ Director Frakes stated that staff vacancies and shortages are directly hindering the ability to provide pro-social activities and are hampering the effectiveness of the programming that does exist.²⁷
 - **Finding:** Given the stresses related to corrections work, corrections officers and similarly situated public employees should qualify for emotional and mental trauma related workers compensation in the same manner as police officers and EMT's.

Recommendation 2: The Committee recommends that the Legislature consider amending Section 48-101.01, the statute that allows First Responders to receive workers compensation benefits for emotional and mental trauma, to include employees of state institutions.

Employee Compensation

- On November 10, 2016, Governor Ricketts announced that an agreement was reached with the Nebraska Association of Public Employees to increase the rate of pay in the existing labor contract for certain staff within the Department.²⁸
- Under the renegotiated contract, effective immediately, wages for caseworkers increased 5 percent, wages for corporals increased 5.4 percent, wages for sergeants increased 6 percent, and wages for corrections officers increased 4.5 percent.²⁹
- The renegotiated contract does not address longevity; and while it increases the wage for corrections officers from \$15.80 to approximately \$16.50, starting wages for NDCS

²³ 8/31/2016 transcript, pages 37-38. (Appendix B)

²⁴ OIG Report, page 30. (Appendix C, Attachment 2)

²⁵ 8/31/2016 transcript, pages 17-19. (Appendix B)

²⁶ 8/31/2016 transcript, pages 17-19. (Appendix B)

²⁷ 8/31/2016 transcript, pages 23-24. (Appendix B)

²⁸ Governor Pete Ricketts; Media Advisory; State Employee Union Accepts Governor Ricketts' Proposal for NDCS Salary Increase (November 10, 2016). ("11/10/2016 Governor Ricketts Media Advisory" - Appendix C, Attachment 5)

²⁹ 11/10/2016 Governor Ricketts Media Advisory. (Appendix C, Attachment 5)

corrections officers are still lower than wages in the local market.³⁰

- **Finding:** The Department is caught in a vicious cycle that is driven by non-competitive wages and overcrowded prison facilities resulting in large-scale staff vacancies, staff shortages, and an extreme employee turnover rate causing staff to perform duties for which they were not hired and management to resort to the use of excessive mandatory overtime all of which is inhibiting the ability to provide even minimal programming leaving inmates idle and crammed into facilities that are not large enough to hold their numbers which seriously jeopardizes the safety of staff and inmates.
- **Finding:** Inadequate pay and staffing shortfall is not unique to the protective services staff and affects nearly every classification.
- **Finding:** The Department's ability to provide competitive pay has been constrained by wage arrays that do not consider the local market.
- **Finding:** Despite efforts of Director Frakes and NDCS staff to problem-solve with smart and creative low cost initiatives, crisis conditions remain as does the heightened risk to the lives and wellbeing of staff and inmates. There is little disagreement over the magnitude of the problems facing the Department and there is even some agreement that resolving the vacancy and turnover rate is going to require a costly adjustment to the pay scale and significant increases in staffing. The staffing problem is exacerbated by the location of some of the facilities and local labor force shortages. The tension between the need for aggressive spending to resolve the crisis on an accelerated timetable and large revenue shortfalls remains a major public policy and safety concern.

Recommendation 3: The Committee recommends that the Department reach a set point in its wage packages, by profession, that recognizes longevity and the local market in which the Department competes.

Recommendation 4: The Committee recommends that proposals the Director submitted to the Governor in conjunction with the Department's FY2016-2017 budget request, but crafted to be phased in over the next four years, be expedited and that a determination of the total amount of money that will be necessary to bring the Department up to par be quantified and reserved.

³⁰ 8/31/2016 transcript, page 25. (Appendix B) Also see 8/31/2016 public hearing documents, pages 2923 to 2939. (Appendix C, Attachment 1)

Information compiled by Legislative staff in June 2016 on starting wages for correctional officers (or similar job classifications): NDCS, \$15.49; Hall County, \$16.48; Douglas County, \$16.84; Lancaster County, \$17.85; and Iowa DOC, \$18.47.

Other Recruitment and Retention Efforts

Reclassification of Nurses

- According to the Inspector General of the Nebraska Correctional System, Doug Koebernick, NDCS faces challenges in attracting staff for health services positions because the private sector and other state agencies may pay more for comparable positions. The Office of Inspector General Report noted that the Division of Behavioral Health within the Nebraska Department of Health and Human Services (DHHS) was able to demonstrate to the Department of Administrative Services (DAS) that nurses who work in DHHS facilities face different challenges than nurses in other settings. As a result, nurses at the Regional Centers received a raise. Inspector General Koebernick recommended that NDCS work with DAS to reclassify nurses who are employed at NDCS facilities, as well.³¹
 - **Finding:** The Committee supports the Office of Inspector General Report recommendation regarding reclassification of nurses. The Department should make the pay of health services positions more competitive with other governmental agencies and the private sector, and should provide a tiered system of advancement, along with other strategies to retrain and recruit qualified mental health staff.

Recommendation 5: The Committee recommends that NDCS work with the Department of Administrative Services to reclassify nurses who are employed at NDCS facilities, similar to the Department of Health and Human Services' reclassification of nurses employed at the Regional Centers.

Workforce Development

- The Behavioral Health Education Center of Nebraska (BHECN) has created several proposals for workforce development training in prisons.³²
 - **Finding:** Given the complexity of providing services within correctional settings, behavioral health workforce development requires a strong and active partnership between academic training programs and NDCS. The Behavioral Health Education Center of Nebraska is an excellent resource that can be used to recruit behavioral health staff and give them on the job experience of working

³¹ OIG Report, pages 16-17. (Appendix C, Attachment 2)

³² Frakes testimony, Appropriations and Judiciary Committee joint hearing transcript - NDCS budget (February 25, 2016), page 7 (Appendix B). Reference to "BHECN proposal" - Behavioral Health Workforce Development proposal from BHECN.

in a correctional environment.

Recommendation 6: The Committee recommends that NDCS work with the Behavioral Health Education Center of Nebraska (BHECN) and other partners to design and implement a behavioral health workforce and training program for use within the Department.

OVERCROWDING

Prison Population in Nebraska

- Nebraska's prison population increased by a thousand inmates from 2005 to 2015.³³
- The NDCS facilities were designed for a population of 3,275 people.³⁴ As of September 27, 2016, the institutional population was 5,162 inmates (not including 144 inmates housed within county jails), which equates to 157.6 percent of design capacity.³⁵
 - **Finding:** The Nebraska prison system is severely overcrowded.

Statutory Framework

- The LR424 Report found that overcrowding and a lack of adequate resources was central to most, if not all, of the scandals in recent years, and recommended changing the permissive language of the Correctional System Overcrowding Emergency Act to mandatory language.³⁶
- The Legislature passed LB598 (2015) to implement recommendations from the LR424 Report. Before LB598, the Act stated that the Governor “may” declare an overcrowding emergency when the prison population reaches 140 percent of design capacity. As amended, beginning July 1, 2020, an overcrowding emergency will automatically take effect when the Director certifies that the prison population has reached 140 percent of design capacity.³⁷
- An overcrowding emergency would require the Parole Board to consider or reconsider inmates who are parole eligible.³⁸
- The Office of Inspector General Report recommended that the Department “[w]ork jointly with the Adult Parole Administration and the Board of Parole to present a plan to the Governor and the Legislature detailing how a correctional system overcrowding emergency would be administered.”³⁹

³³ 9/30/2016 transcript, page 171 (Appendix 7)

³⁴ NDCS Quarterly Data Sheet, available on NDCS website. As of December 7, 2016, the most recent available Data Sheet was from April-June 2016.

Also see 2/25/2016 transcript, page 14 and page 18 (Appendix B) and NDCS Data Sheets document (Appendix C, Attachment 17).

³⁵ 9/30/2016 transcript, page 171. (Appendix B)

³⁶ LR424 (2014) Special Investigative Committee for the Department of Correctional Services Committee Report (December 15, 2014), page 34 and page 57. (“LR424 Report” - Appendix C, Attachment 6) For an overview of overcrowding issues from 2006-2014, see the LR424 Report.

³⁷ Nebraska Revised Statutes, Section 83-962, as amended by LB598 (2015), section 38.

³⁸ Nebraska Revised Statutes, Section 83-962.

³⁹ OIG Report, page 63. (Appendix C, Attachment 2)

- **Finding:** The executive branch should continue to reduce prison overcrowding to avoid triggering the Overcrowding Emergency Act, and should also develop a plan in the event that the prison population is still above 140 percent of design capacity in 2020.

Recommendation 7: The Committee recommends that the Board of Parole and the Parole Administration, in consultation with NDCS, develop a plan detailing how a correctional system overcrowding emergency would be administered. The Parole Board and Parole Administration should present the plan to the Governor and the Legislature by September 15th, 2017.

Risk of Litigation

- In recent years, other states have been forced to address overcrowding by releasing people from prison. For example, the 2011 Brown v. Plata decision was the result of decades of litigation in California. In that case, the US Supreme Court held that a court-mandated population limit was necessary to remedy a violation of prisoners' Eighth Amendment Constitutional rights. The Court upheld a court order to reduce the state prison population to 137.5 percent of design capacity within two years.⁴⁰
- Over the last few years, the Nebraska prison system has been on the brink of litigation over conditions of confinement due to overcrowding.⁴¹
- The Nebraska chapter of the American Civil Liberties Union (ACLU) released a report in 2014 articulating a legal rationale for how severe overcrowding, substandard healthcare, violence, idleness, lack of opportunities for physical exercise, incessant exposure to cacophonous noise in housing units, poor ventilation, and the placement of people with mental illness in solitary confinement violate the constitutional prohibition against cruel and unusual punishment and other federal laws.⁴² A year later, the ACLU formed a litigation advisory committee responsible for finding legal remedies for harmful conditions of confinement for individuals and classes of prisoners in Nebraska. This team of litigators began compiling grievances of people who reported being denied access to

⁴⁰ Brown v. Plata, 131 S.Ct. 1910, U.S. Cal. (2011).

⁴¹ The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Nebraska Department of Correctional Services; Vera Institute of Justice (November 1, 2016), page 16 ("Vera Report" - Appendix C, Attachment 7). The Vera Report is described in greater detail in the "Restrictive Housing" section of this report. The primary focus of the Vera Report is on restrictive housing, but the report also briefly addressed overcrowding issues because prison overcrowding in Nebraska is extreme compared to most other states.

⁴² The Tipping Point, Have Nebraska's Prisons Crossed into Unconstitutional Territory?; American Civil Liberties Union of Nebraska (March 2014). ("ACLU Report" - Appendix C, Attachment 8)
Also see Amy Miller (ACLU Legal Director) testimony, 2/25/2016 transcript. (Appendix B)

health care or rehabilitative programming, being assaulted, or being unfairly placed in solitary confinement.⁴³

- Disability Rights Nebraska also released a report in 2014 outlining problems within NDCS that could result in litigation, including the impacts of solitary confinement practices on people with disabilities, inadequate mental health treatment, insufficient re-entry and discharge planning, and lack of healthcare and other community supports upon returning to society.⁴⁴
 - **Finding:** Nebraska is at risk of a lawsuit before 2020, even if the NDCS population is below 140 percent of design capacity within the next four years, because the focus in prison overcrowding litigation is on the overall conditions of confinement.

Justice Reinvestment Initiative (JRI) Projections

- Overcrowding is an issue of a lack of capacity within the prison system, and is also a symptom of larger, more complex issues within the broader criminal legal system.⁴⁵
- To address challenges with prison overcrowding and increased spending on corrections, Nebraska invited the Council of State Governments (CSG) Justice Center to provide technical assistance to the state as part of the Justice Reinvestment Initiative (JRI). Justice Reinvestment is “a data-driven approach designed to reduce corrections spending and reinvest a portion of savings in strategies that reduce recidivism and increase public safety.”⁴⁶
- Nebraska passed legislation in 2015, and again in 2016, to enact the Justice Reinvestment recommendations from CSG. Currently, Nebraska is in “phase two” of JRI, and will continue to receive technical support from CSG to implement LB605 (2015) and LB1094 (2016).⁴⁷
- According to the JRI projections from CSG, the NDCS population will be lower than 140 percent of design capacity by 2020, if the JRI policies are fully implemented.⁴⁸

⁴³ American Civil Liberties Union (ACLU) of Nebraska; Press Release; ACLU of Nebraska Announces Prison Litigation Advisory Panel (February 12, 2015). (“2/12/2015 ACLU Press Release” - Appendix C, Attachment 9)

⁴⁴ Briefing Book on Selected Issues in Mental Health and Corrections, A Collection and Summary of Research; Disability Rights Nebraska (2014). (“Disability Rights Nebraska Report” - Appendix C, Attachment 10)

⁴⁵ Frakes testimony, 9/30/2016 transcript, page 171. (Appendix B)

⁴⁶ Nebraska Justice Reinvestment Approach: Reducing prison overcrowding and expanding probation and parole supervision; Council of State Governments (CSG) Justice Center; (May 2015), page 1. (“CSG Summary of LB605” - Appendix C, Attachment 11)

⁴⁷ Committee on Justice Reinvestment Oversight Special Committee Report; Nebraska Legislature; Annual Report (2016). (“JROC Report” - Appendix C, Attachment 12)

⁴⁸ CSG Summary of LB605 (Appendix C, Attachment 11)

- Nebraska has seen a slight decrease in the prison population since passage of LB605, but the state is not currently meeting the JRI projections.⁴⁹
 - **Finding:** The JRI projections will not be met unless the Department implements other changes, as well - in particular, the changes recommended by CSG as a result of the Justice Program Assessment (JPA).⁵⁰ The JPA recommendations are explored in greater detail in the “Programming” section of this report.
 - **Finding:** Addressing overcrowding within the prison system must be done comprehensively, by examining the impacts to the entire criminal legal system. To reduce the prison population further than the CSG projections and get closer to 100 percent of design capacity, other policy changes must be enacted by the Legislature - in particular, more comprehensive sentencing reform.
 - **Finding:** Although the primary focus should be on efforts to reduce overcrowding by reducing recidivism, the State should not limit the scope of its efforts to changes within NDCS.

Reduce Overcrowding

Reduce Overcrowding: Reduce Recidivism

- The LR424 Report noted two principles that controlled operations at NDCS prior to 2015: “First, expedite the movement of inmates out of the prison gates and, second, keep those prisoners released from returning to the Department of Correctional Services.”⁵¹
- According to the LR424 Report, “Instead of having inmates complete their programming prior to being presented to the Parole Board, inmates were presented to the Parole Board for their consideration who had completed little or no programming. ... [T]his change in the “parole model” was the direct result of insufficient resources devoted to programming inside the Department of Correctional Services as well as the demand to move prisoners in an effort to alleviate overcrowding. ... Many of the inmates who had been paroled lacked sufficient resources to secure the programming on the outside.”⁵²
- As recommended by the LR424 Report, the Parole Administration is now directly supervised by the Board of Parole.⁵³ This change took effect on July 1, 2016.⁵⁴

⁴⁹ JROC Report (Appendix C, Attachment 12)

⁵⁰ Nebraska Justice Program Assessment (JPA) Executive Summary; Council of State Governments (CSG) Justice Center (2016) (“JPA Executive Summary” – Appendix C, Attachment 13a).

⁵¹ LR424 report, page 37. (Appendix C, Attachment 6)

⁵² LR424 report, page 38. (Appendix C, Attachment 6)

⁵³ LR424 report, page 58. (Appendix C, Attachment 6)

⁵⁴ Nebraska Parole Transition Implementation Plan, William D. Burrell (June 1, 2016). (“Parole Transition Plan” - Appendix C, Attachment 14)

- According to Parole Board Chair Rosalyn Cotton and Parole Administrator Julie Micek, the Parole Administration transition out of NDCS is going well.⁵⁵ Parole Board Chair Cotton does not feel like the Board is being pressured by Governor Ricketts to grant parole early.⁵⁶
- The Parole Board has requested funding based on the assumption that the number of parolees will increase in the next fiscal year.⁵⁷
 - **Finding:** Some things have not changed since 2015 - getting people out of prison and keep them from coming back are still core principles that drive the work of NDCS. Those principles were not the problem; the problem was a lack of transparency and accountability in putting those principles into practice.
 - **Finding:** The independence of the Parole Board is important, and the transition of the Parole Administration out of NDCS needs to be successful. The Committee is confident that the Parole Board and Parole Administration budget request submitted in September accurately reflects their needs at this point in time.

Recommendation 8: The Committee recommends that NDCS review the budget request submitted in September to ensure that it accurately reflects the Department's needs. The Governor should include the full NDCS budget request and the full Parole Board/Parole Administration request in his budget recommendation in January. The Appropriations Committee should make sure the Governor's budget recommendation addresses the issues raised in this report. The Legislature should fully fund those requests.

Reduce Overcrowding: Increase Capacity

- One way to reduce overcrowding is to increase capacity. This can be accomplished by building new facilities, or by adding beds at existing facilities.
- Nebraska was faced with prison overcrowding in the 1990's and chose to build new facilities; the Tecumseh State Correctional Institution (TSCI)⁵⁸ and the Work Ethic Camp (WEC).⁵⁹

⁵⁵ Cotton testimony, 9/30/2016 transcript, page 94. Micek testimony, 9/30/2016 transcript, page 137. (Appendix B)

⁵⁶ 9/30/2016 transcript, page 129. (Appendix B)

⁵⁷ Micek testimony, 9/30/2016 transcript, page 151. (Appendix B) Also see Board of Parole Budget Request Summary for FY2017/18 and FY2018/19; Legislative Fiscal Office, (2016). ("Parole 2017 budget request summary" – Appendix C, Attachment 15)

⁵⁸ TSCI added 960 beds in December 2001. Nebraska Department of Correctional Services 2014 Master Plan Final Report; Dewberry Architects Inc (October 27, 2014), page 2-53. ("2014 NDCS Master Plan" – Appendix C, Attachment 16)

⁵⁹ 2014 NDCS Master Plan, page 2-57. (Appendix C, Attachment 16) In April 2001, WEC added 75 beds for male Probationers and 25 beds for female Probationers. The WEC beds were not included in the total design capacity for NDCS until May 2014 (see footnote 61, below).

- According to data sheets compiled by the Department, the NDCS design capacity in April 2014 was 3,175.⁶⁰ In May 2014, the design capacity increased to 3,275.⁶¹ This 100-bed “increase” in design capacity was accomplished without any new construction by including the WEC beds in the total NDCS design capacity; the total NDCS design capacity and population count excluded WEC beds and inmates until May 2014.
- NDCS hired a consultant to create a Master Plan in 2006, but NDCS did not request funding to build beds as a result of the 2006 Master Plan during the administration of former Governor Dave Heineman, from 2005 to 2015.⁶²
- NDCS hired a consultant to create a Master Plan in 2014.⁶³ NDCS has requested some funding as a result of the 2014 Master Plan, but less than the full amount recommended by the consultant.⁶⁴
 - **Finding:** The NDCS budget request includes reasonable modifications to the 2014 Master Plan, which was completed before the passage of LB605, and before Nebraska fully committed to the Justice Reinvestment Initiative process.
 - **Finding:** It would be difficult to staff a new facility even if NDCS did request funding for the full recommendations from the 2014 Master Plan. Until understaffing issues are resolved, Nebraska should increase capacity within NDCS as little as possible - through expansion of existing facilities, as needed, rather than building new facilities.

Recommendation 9: The Governor and the Legislature should take a close look at the Residential Treatment Center (RTC) proposal in the NDCS budget request. More discussion

⁶⁰ NDCS monthly data sheet, April 30, 2014. NDCS Data Sheets (2006 – 2016), pages 2047 to 2048 (“NDCS Data Sheets document” - Appendix C, Attachment 17).

⁶¹ NDCS monthly data sheet, May 31, 2014. This was the first data sheet to include WEC beds and inmates in the total NDCS design capacity and population count. Previous monthly data sheets included information about WEC in a separate section.

NDCS Data Sheets document, pages 2049 to 2050. (Appendix C, Attachment 17)

⁶² Strategic Capital Facilities Master Plan, Prepared for the Nebraska Department Correctional Services Executive Steering Council; Carter Goble Lee in association with DLR Group (October 2006). (“2006 NDCS Strategic Capital Facilities Plan” – Appendix C, Attachment 18)

According to the Legislative Fiscal Office, in 2007 the Community Corrections Council requested funding to build a Substance Abuse Treatment Center, but that request was not related to the 2006 NDCS Master Plan and was not funded. Funding for a Program Statement was appropriated in 2006 (LB1060). The Capital Construction requests for those years do not include any other funding requests for additional beds.

⁶³ 2014 NDCS Master Plan (Appendix C, Attachment 16)

⁶⁴ Budget Summary for FY2017/18 and FY2018/19; Nebraska Department of Correctional Services (2016). (“NDCS 2017 budget request” – Appendix C, Attachment 19) Also see NDCS “Reception and Treatment Center” program statements from April 2015 and August 2016:

NDCS Reception and Treatment Center (RTC) Program Statement, Final Report (April 2015). (“4/2015 NDCS RTC Program Statement” – Appendix C, Attachment 20a)

NDCS Reception and Treatment Center (RTC) Program Statement, Update and Phase One Executive Summary Report (August 31, 2016). (“8/31/2016 NDCS RTC Program Statement” – Appendix C, Attachment 20b)

and analysis is needed before moving forward with funding for a “brick and mortar” expansion.

Reduce Overcrowding: Decrease Admissions and Length of Stay

- Some of the ways to reduce overcrowding are beyond the Department’s control. For example, changes to sentencing policies and practices that result in sending fewer people to prison, and sending people to prison for shorter lengths of time, involve legislative and judicial decisions.
- The LR424 Report noted, “The stage for overcrowding was set by a generation of policymakers who responded to the public's call to get ‘tough on crime.’ This resulted in a wave of legislation which turned many misdemeanors into felonies, increased sentence lengths for offenders, saw the increased prevalence of mandatory minimum sentences and habitual offender statutes. This ‘tough on crime’ legislation was responsible for an increased number of convicted offenders being sentenced to a period of confinement to NDCS, which ultimately led to the increase in the corrections’ population that set the stage for the overcrowding that followed.”⁶⁵
- LB605 (2015) decreased sentence lengths for some felonies, and created a presumption of probation for the lowest level felonies, but did not reverse all the “tough on crime” changes made in previous decades.⁶⁶ Certain offenses contributed disproportionately to the increase in prison admissions, apparently as a result of penalty enhancements enacted by the Legislature. LB605 made little or no change to the drug, DUI, and weapons offenses mentioned by CSG during presentations to the Justice Reinvestment Work Group in 2014.⁶⁷
- Bills that would have changed or eliminated mandatory minimums and the habitual criminal enhancement did not pass during the 2015-2016 session.⁶⁸ A bill that would have ensured a period of parole eligibility also did not pass.⁶⁹ This type of legislation may help reduce overcrowding by reducing length of stay, but the impact is difficult to predict and measure.⁷⁰
 - **Finding:** Even with the changes made by LB605, Nebraska continues to incarcerate people who do not need to be incarcerated, and supervise people

⁶⁵ LR424 report, page 34. (Appendix C, Attachment 6)

⁶⁶ LB605 (2015) Also see CSG Summary of LB605 (Appendix C, Attachment 11)

⁶⁷ Justice Reinvestment Working Group presentation, Second Meeting (Powerpoint presentation); Council of State Governments (CSG) Justice Center (August 26, 2014), pages 15-16. (“8/26/2014 CSG JRI Working Group presentation” – Appendix C, Attachment 21)

⁶⁸ LB172 (2015) and LB173 (2015)

⁶⁹ LB483 (2015)

⁷⁰ 8/26/2014 CSG JRI Working Group presentation, pages 9; 20; and 25. (Appendix C, Attachment 21)

who do not need to be supervised. There are people in prison and jail, and on probation and parole, who do not pose a high risk of causing harm to others.

- ***Finding:*** It is possible to reduce the prison population without increasing crime rates by sending fewer people to prison and jail.⁷¹

Recommendation 10: The Legislature should convene a group of attorneys to conduct a comprehensive review of the Nebraska Criminal Code. The group should also review criminal penalties outside of the Code. The group should provide a report to the Judiciary Committee by September 15, 2018 with recommended changes for the 106th Legislature to consider in 2019.

⁷¹ “States like New York, California, and New Jersey have made sizable reductions in their state prison populations, while experiencing concomitant drops in crime that exceeded the national average.” Marc Mauer and Nazgol Ghandnoosh, “Policy Brief: Fewer Prisoners, Less Crime: A Tale of Three States,” (Washington, DC: The Sentencing Project, 2014). - Vera Report, page 81. (Appendix C, Attachment 7)

MENTAL & BEHAVIORAL HEALTH TREATMENT

The LR34 Committee, and the LR424 Committee before it, has researched mental and behavioral health needs and capacity within the Nebraska Department of Correctional Services. As part of that process, the LR34 Committee has reviewed multiple reports with many recommendations; this section will highlight certain findings and recommendations from the reports and from hearing testimony.

Of particular importance was a report issued by Dr. Bruce Gage, the Director of Psychiatry at the Washington State Department of Corrections.⁷² Director Frakes invited Dr. Gage to visit Nebraska to analyze the quality and quantity of behavioral health services within the Department. Dr. Gage completed his report (“the Gage Report”) on July 6, 2015, and the Department released it to the public on August 28, 2016.

Other important works referenced in this section include the Office of Inspector General of the Nebraska Correctional System Report and the report issued by the Legislature’s Task Force on Behavioral and Mental Health.⁷³ Inspector General Koebernick reported on the ongoing challenges behavioral and mental health services staff face in the Department including the role that understaffing and low morale play in service provision.⁷⁴ Legislative Resolution 413 (2016) established the Task Force on Behavioral and Mental Health (“LR413 Task Force”) to study issues relating to the adequacy of the Behavioral Health System, including monitoring the progress of the Department of Health and Human Services, Division of Behavioral Health, in conducting a statewide needs assessment and developing a strategic plan. The LR413 Task Force explored the mental and behavioral health continuum but did not primarily focus on the corrections environment. The LR413 Report discusses some of the challenges related to usage of the state hospital and how former inmates can expect to be served in the community for their ongoing behavioral and mental health needs. These reports and others may be found in the attachments to this document.

Mental and Behavioral Health Staffing

- The high rate of behavioral and mental health staff vacancies is a major barrier to providing adequate treatment.⁷⁵ According to the Department’s Behavioral Health

⁷² Mental Health System Consultation; Nebraska Department of Correctional Services; Bruce C. Gage, M.D. (July 6, 2016). (“Gage Report” – Appendix C, Attachment 22)

⁷³ Report of the Mental and Behavioral Health Task Force (December 1, 2016). (“LR413 Report” - Appendix C, Attachment 24)

⁷⁴ OIG Report (Appendix C, Attachment 2).

⁷⁵ Issues relating to NDCS vacancies are addressed in greater detail in the “Staffing” section of this report.

administrator, Dr. Alice Mitwaruciu, “The majority of our clinicians who have left accepted employment elsewhere in the community where they are receiving better wages and work under less stressful environments with less difficult clients.”⁷⁶

- **Finding:** One of the greatest challenges in providing treatment and services to inmates is the retention of staff - particularly behavioral health staff. The Committee supports efforts made by the Department to recruit and retain employees, including, but not limited to, increasing wages, improving working conditions, and increasing employee input and flexibility in work schedules.

Appropriate Diagnosis

- Dr. Gage reported that nationally 20 to 25 percent of male prisoners and 30 to 50 percent of female prisoners receive or need some form of mental health treatment.⁷⁷
- According to Dr. Gage, estimates of mental illnesses at NDCS in 2015 were significantly below what national averages would indicate. The Gage Report states, “most prevalence studies show rates of psychotic disorders alone in state prisons of 4-15 percent and depression is on the order of 10 percent” while NDCS reports prevalence of “Major Mental illness” at 2-3 percent.⁷⁸
- According to testimony from Dr. Martin Wetzel, the former NDCS Chief of Psychiatry, the Department seems to indicate that estimates of mental illnesses within NDCS are on par with national averages, or are above national averages.⁷⁹ According to the Department, the rate of “seriously mentally ill” diagnoses within the NDCS population was 20 percent for males, and 32 percent for females; the NDCS population as a whole was around 21 percent.⁸⁰
- The definition of “Major Mental Illness” used in the NDCS Administrative Regulation for Mental Health Services still refers to an outdated version of the Diagnostic and Statistical Manual of Mental Disorders (DSM).⁸¹ The definition of “Major Mental Illness” used in the

⁷⁶ Mitwaruciu testimony, 10/12/2016 transcript, page 168. (Appendix B)

⁷⁷ Gage Report, page 1. (Appendix C, Attachment 22)

⁷⁸ Gage Report, page 3. (Appendix C, Attachment 22) Also see Jerall Moreland (Deputy Ombudsman for Institutions) testimony, 10/12/2016 transcript, page 11. (Appendix B)

⁷⁹ Wetzel testimony, LR34 Committee hearing transcript - mental health, programming and treatment, funding, follow-up (November 6, 2015), page 72. (Appendix B)

⁸⁰ Documents compiled for the LR34 Committee October 12, 2016 Public Hearing on Behavioral Health and Restrictive Housing, page 005. (“10/12/2016 public hearing documents” – Appendix C, Attachment 23)

⁸¹ AR115.23 refers to the DSM-IV-TR. 10/12/2016 public hearing documents, page 016. (Appendix C, Attachment 23)

The Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association, offers a common language and standard criteria for the classification of mental disorders. The most recent version, the DSM-5, was published in 2013. The previous version, the DSM-IV-TR, was published in 2000.

NDCS “Health Services - Inmate Health Plan” uses updated language from the newest version of the DSM, known as the “DSM-5.”⁸²

- **Finding:** The Committee is unable to determine whether or not inmate diagnoses are in line with national averages. Additionally, the terminology that is used in the Gage Report, in recent data from NDCS, and in hearing testimony, is inconsistent and unclear. For example, terms such as “Serious Mental Illness” and “Major Mental Illness” are often used interchangeably, without a clear distinction between them.
- **Finding:** It is unclear to the Committee if NDCS currently has the capability to understand the scale of mental and behavioral health needs in the system.

Recommendation 11: The Committee recommends that the Department engage in, complete, and report out the findings of follow-up assessments of the Department’s mental health system, similar to the Gage Report, on a regular basis. The Committee also recommends that NDCS use clear, consistent, clinically accurate terminology to determine the actual mental and behavioral health treatment needs of the inmate population. If statutory definitions need to be revised to accomplish this, the Department should communicate with the Legislature to discuss potential legislation.

Transfer of Inmates to the Lincoln Regional Center

Treatment Needs

- There are some inmates who might benefit from inpatient mental health treatment, but the Department cannot transfer them to the state psychiatric hospital, the Lincoln Regional Center (LRC).⁸³ The Division of Behavioral Health within the Nebraska Department of Health and Human Services (DHHS) is responsible for the operation of LRC. According to Sheri Dawson, Director of the DHHS Division of Behavioral Health, transfer of individuals from NDCS facilities to LRC is an ongoing topic of discussion between NDCS and DHHS.⁸⁴

⁸² OIG Report, page 279. (Appendix C, Attachment 2)

See the NDCS Inmate Health Plan, pages 9-10. The “Inmate Health Plan” was included as Attachment 40 to the Inspector General’s report, and can be found in the OIG Report, pages 271 to 299. (Appendix C, Attachment 2) The definition of “Major Mental Illness” begins on page 279. (Appendix C, Attachment 2)

⁸³ Wetzel testimony, 11/6/2015 transcript, page 65. (Appendix B)

⁸⁴ Dawson testimony, 11/6/2015 transcript, page 14. (Appendix B)

- Counties often transfer individuals awaiting adjudication to NDCS because they cannot properly manage or offer appropriate services to them in county jails. These individuals are known as “county safekeepers.”⁸⁵
- According to the Ombudsman’s office, some county safekeepers remain in restrictive housing for the bulk of their stay at NDCS, and do not receive the full array of mental health services.⁸⁶ According to Director Frakes, county safekeepers who are “actively decompensated” get immediate mental health services.⁸⁷
 - **Finding:** The State should examine the appropriate role for NDCS and DHHS facilities in the management of county jail inmates, particularly for county safekeepers with mental or behavioral health treatment needs.

Recommendation 12: The Committee recommends that DHHS explore the role of the Regional Centers as potential locations for county jail inmates with identified mental or behavioral health needs.

Recommendation 13: The Committee recommends that NDCS find more therapeutic and less restrictive housing for inmates with mental disorders, including county safekeepers.

Treatment Capacity

- According to the Ombudsman’s office, there is insufficient capacity within NDCS and DHHS for inmates in need of hospitalization or residential treatment for mental and behavioral health issues.⁸⁸
- The LR413 Task Force found that there is a waiting list for services at LRC and a need for additional inpatient beds and a need for additional staff. The Task Force recommended “that an independent consultant or educational institution conduct a study to determine the right size and staffing levels for the Lincoln Regional Center.”⁸⁹
- The Ombudsman’s office recommended that the Legislature consider a statutory requirement to designate a given number of beds at LRC for use by NDCS inmates.⁹⁰
 - **Finding:** For some individuals, NDCS segregation units are too restrictive, and not therapeutic enough; the Lincoln Regional Center may be more therapeutic,

⁸⁵ Frakes testimony, 9/30/2016 transcript, page 238. (Appendix B)

⁸⁶ 10/12/2016 public hearing documents, page 120. (Appendix C, Attachment 23) Deputy Ombudsman Moreland provided a document at the 10/12/2016 hearing titled, “Details on the Behavioral Health and Segregation System within the Nebraska Department of Correctional Services,” which can be found on pages 118-124 of the 10/12/2016 public hearing documents. (Appendix C, Attachment 23)

⁸⁷ Frakes testimony, 9/30/2016 transcript, page 238. (Appendix B)

⁸⁸ Moreland testimony, 10/12/16 transcript, page 16. (Appendix B)

⁸⁹ LR413 Report, page 8. (Appendix C, Attachment 24)

⁹⁰ 10/12/2016 public hearing documents, page 122. (Appendix C, Attachment 23) Also see Moreland testimony, 10/12/16 transcript, page 52. (Appendix B)

but may not be secure enough for these same individuals. The current approach - using secure beds at NDCS, and trying to make them therapeutic - is not meeting the needs of this population.

Recommendation 14: The Committee supports the LR413 Task Force’s recommendation that an analysis be made by an independent consultant or educational organization to determine the right size for the Lincoln Regional Center, including the number of inmates who may need the level of care that can only be provided by the state hospital. Such an analysis should consider whether it is appropriate to establish designated NDCS beds at the Lincoln Regional Center, as suggested by the Ombudsman’s office.

Mission Specific Housing

- NDCS acknowledges that a significant number of individuals with mental and behavioral health issues are assigned to restrictive housing.⁹¹ Over 90 percent of the inmates who spent time in restrictive housing during FY 2016 had at least one behavioral health diagnosis; 28 percent had a serious mental illness.⁹²
- According to Director Frakes, NDCS is working to reduce the need for restrictive housing through the creation of “mission-specific housing units” to enable the Department to place inmates who share similar interests or characteristics or needs, such as veterans or inmates with physical limitations, into a single housing unit where they can live together. Mission-specific housing allows NDCS to focus resources for inmates with specific needs more efficiently and also reduces conflict by allowing inmates who may be vulnerable in the general population to live together in a safe environment.⁹³
- The Ombudsman’s office has urged the Department to develop mission specific housing units for inmates who have identifiable mental or behavioral health issues, but who do not have a “Serious Mental Illness” or a “Major Mental Illness” that requires residential or inpatient treatment. These inmates cannot be sent to the Department’s Secure Mental Health Unit, or to the Mental Health Unit, or to the Lincoln Regional Center, and are often placed in segregation units.⁹⁴

⁹¹ This subsection will briefly address issues regarding the use of restrictive housing for inmates with mental and behavioral health needs; other related issues are addressed in greater detail in the “Restrictive Housing” section of this report.

⁹² 2016 Restrictive Housing Annual Report; Nebraska Department of Correctional Services (September 15, 2016), page 10. (“9/15/2016 NDCS Restrictive Housing Report” – Appendix C, Attachment 25)

The 2034 inmates who spent time in restrictive housing during FY 2016 had at least one behavioral health diagnosis; 698 individuals were diagnosed as having a serious mental illness.

⁹³ Frakes testimony, 10/12/2016 transcript, page 92. (Appendix B)

⁹⁴ 10/12/2016 public hearing documents, pages 119-120. (Appendix C, Attachment 23)

- **Finding:** The Committee supports the Department in its efforts to establish mission specific housing units, particularly as an alternative to restrictive housing. The Committee also supports a recommendation from the Office of Inspector General Report that the Department implement a “restrictive housing peer support pilot program” no later than October 1, 2017.⁹⁵
- **Finding:** Inmates who exhibit challenging behaviors but who are not recognized by the Department as having a “Serious Mental Illness” or “Major Mental Illness” would benefit from a meaningful form of professional intervention and an environment that is more therapeutic than a segregation unit.

Recommendation 15: The Committee recommends that the Department establish mission specific housing units that offer a therapeutic environment for inmates who have mental and behavioral health issues, but who cannot be admitted to the Mental Health Unit at Lincoln Correctional Center or transferred to the Lincoln Regional Center. Such populations include veterans, inmates with traumatic brain injuries, inmates with dementia, and inmates with developmental disabilities, among others.

County Jail Program

- The Legislature funded the use of county jails for state inmates during FY2015-16 and FY2016-17 with the stated intention that no further funding be provided after FY2016-17 to contract with county jail facilities to house NDCS inmates.⁹⁶
- Inspector General Koebernick recommended that NDCS “continually review placements of inmates in the county jail program to check that the inmates who are placed there actually are qualified to participate in the program” and also recommended that NDCS “review options pertaining to using county jails as work release placements for people who will be transitioning to areas near those county jails.”⁹⁷
- As noted above, many county jails in Nebraska are not equipped or staffed to provide behavioral or mental health services.⁹⁸

Recommendation 16: The Committee recommends that NDCS inmates no longer be housed at county jails. If the Department requests funding to house state inmates in county jails, use of county jails should be limited to work release placements for individuals who will live nearby after release from incarceration, and the Department should establish clear criteria for who may

⁹⁵ OIG Report, page 62. (Appendix C, Attachment 2)

⁹⁶ LB657 (2015), Section 162

⁹⁷ OIG Report, page 41. (Appendix C, Attachment 2)

⁹⁸ 10/12/2016 public hearing documents, page 120. (Appendix C, Attachment 23)

be housed in a county jail. The criteria should ensure, at a minimum, that inmates who need mental or behavioral health treatment are housed in a facility that is able to provide that treatment.

Sex Offender Treatment Availability

- Approximately 18.7 percent of NDCS inmates are sex offenders; nearly 1,000 individuals. The Department has the capacity to provide sex offender treatment to approximately 88 individuals at one time.⁹⁹
- The Bibliotherapy Healthy Lives Program (bHeLP) is a 9-session program offered to inmates who are a low risk to reoffend. The program is offered at three facilities, and has a capacity of 8 participants. The Outpatient Healthy Lives Program (oHeLP) is a 12-to 15-month program offered to inmates who are assessed to be at a relatively moderate risk to sexually reoffend. The program is offered at three facilities, and has a capacity of 8 participants. The Inpatient Healthy Lives Program (iHeLP) is a 2- to 3-year program offered for inmates who have been assessed as a high risk for further sexual violence. The program is only offered at one facility, and has a capacity of 52 participants.¹⁰⁰
- If an inmate is referred to iHeLP or oHeLP and fails to complete sex offender treatment while incarcerated at an NDCS facility, the Parole Board will not consider him or her for parole until the program is successfully completed. Issues relating to clinical treatment programs, including sex offender treatment, and parole eligibility are addressed in greater detail in the “Programming” section of this report.
- Failure to complete sex offender treatment while incarcerated at an NDCS facility can also lead to commitment under the Sex Offender Commitment Act, which could result in indefinite detention for treatment at the Lincoln Regional Center or the Norfolk Regional Center.¹⁰¹
 - **Finding:** Sex offender treatment programs have limited capacity, and have lengthy treatment times.
 - **Finding:** While barriers to treatment and programming should be addressed across the board, particular focus should be placed on removing language

⁹⁹ Email correspondence with Inspector General Koebernick (11/2/2016):

“According to NDCS 18.7% of their inmates are in for sex crimes which is actually close to 1000 inmates. From the information provided to me they have the capacity to serve 88 individuals at one time in sexual programs (IHELP, OHELP, & BHELP).”

¹⁰⁰ “Programs List for Legislature” spreadsheet from NDCS Deputy Director Mike Rothwell (December 2, 2016), “Clinical Programs” tab. (“NDCS Programs List” - Appendix C, Attachment 26)

¹⁰¹ Nebraska Revised Statutes, Section 83-174.02

barriers to sex offender treatment, because failure to complete sex offender treatment can lead to increases in the number of people housed at the Regional Centers.

Recommendation 17: The Committee recommends that NDCS increase sex offender treatment options to ready more inmates for parole by their eligibility date. In particular, the Department should take action to remove language barriers to sex offender treatment.

Re-entry Medication Needs

- According to the Gage Report, “staff and patients both report that the two week supply of medications NDCS provides at release is rarely enough to bridge the gap until their first appointment with a community psychiatric prescriber.”¹⁰²

Recommendation 18: The Committee recommends that NDCS provide enough medication at release to last until a scheduled community based mental health appointment. The Department should provide appropriate case management to ensure access to community based treatment and medications upon release, and should provide inmates a prescription upon release, if needed.

¹⁰² Gage Report, page 10. (Appendix C, Attachment 22)

PROGRAMMING

The LR34 Committee identified significant prison programming gaps during the course of its study.¹⁰³ As part of its research, the LR34 Committee also reviewed multiple reports that highlight program gaps and make recommendations on how to close them. This section restates many of the findings and recommendations from those reports, which may be found in the attachments to this document.

Background and Statutory Framework

- The LR424 Report incorporated the findings and recommendations from a Legislative Performance Audit Committee report on NDCS programs and procedures.¹⁰⁴
- According to the LR424 Report, a lack of resources resulted in limited programming opportunities for inmates within NDCS. A lack of resources also resulted in limited opportunities for parolees and other formerly incarcerated individuals to receive programming and treatment in the community.¹⁰⁵
- LB598 (2015) implemented recommendations from the LR424 Report. Part of the intent of that legislation was to ensure the maintenance of records for each inmate, including programming recommendations. LB605 (2015) and LB1094 (2016) were enacted as a result of the Justice Reinvestment Initiative (JRI). Successful implementation of JRI legislation depends upon the availability of programming opportunities for probationers, inmates, and parolees.¹⁰⁶
- NDCS officials have stated that lack of programming is a contributing factor to assaults in prison.¹⁰⁷
 - **Finding:** Programming is integral to safe communities and safe prisons.

Justice Program Assessment

¹⁰³ The term “programming” as used in this section includes both “clinical treatment programs” and “non-clinical programs.” “Non-clinical programs” are also sometimes known as “correctional programming.” Issues relating primarily to clinical treatment programs are also addressed in the “Mental and Behavioral Health Treatment” section of this report.

¹⁰⁴ Nebraska Department of Correctional Services; Disciplinary Process, Programs, and Commitment Processes; Performance Audit Committee, Nebraska Legislature (November 2014). (“2014 Performance Audit Report – NDCS” – Appendix C, Attachment 27)

¹⁰⁵ LR424 Report, page 38. (Appendix C, Attachment 6)

¹⁰⁶ JROC Report, update from Board of Parole (page 40 of .pdf). (Appendix C, Attachment 12) Also see JROC report, update from NDCS (page 41 of .pdf), and Attachment G, JRI implementation plan (pages 45-51 of .pdf). (Appendix C, Attachment 12)

¹⁰⁷ Rothwell testimony, 10/28/2016 transcript, page 10. (Appendix B) Also see Frakes testimony, 8/31/2016 transcript, pages 18-20. (Appendix B)

- In addition to working with the Council of State Governments (CSG) Justice Center through the Justice Reinvestment Initiative, Director Frakes invited CSG to “conduct an in-depth assessment of institutional programs to identify how the Department can modify its investments to maximize recidivism reduction.”¹⁰⁸
- Following a six-month assessment of programming within the Department, CSG presented the JPA recommendations on June 21, 2016.¹⁰⁹
- The JPA Framework includes four elements: (1) target the right people for programming, based on risk assessment; (2) rely on effective programs; (3) implement programs with quality and fidelity; and (4) reduce recidivism and take action.¹¹⁰

Recommendation 19: The LR34 Committee recommends that NDCS develop an implementation plan for the JPA recommendations on program delivery as soon as possible.

Access to Programming - Inmate Risk/Need Assessments

- The first element of the JPA Framework is “target the right people for programming, based on risk assessment,” in order to address the question, “Who should receive programming?”¹¹¹
- Prior to July 2016, NDCS did not have an assessment tool to measure risk of recidivism, nor did it comprehensively assess what programming inmates needed. To correct this significant problem, NDCS started implementing the Strong-R Assessment Tool in July 2016.¹¹²
- NDCS does have access to assessment results from the pre-sentence investigation (PSI) for most inmates, but does not fully use the assessment information available, and “often duplicates assessments unnecessarily,” according to the JPA report.¹¹³
- The stated goal of the Nebraska Department of Corrections is to have inmates who will spend more than 18 months in prison assessed using the Strong-R Assessment within 30 days of admission.¹¹⁴ However, NDCS has fallen behind schedule due to staffing issues and is currently at about a 35- to 40-day timetable for assessments.¹¹⁵

¹⁰⁸ JPA Executive Summary (Appendix C, Attachment 13a) The Justice Reinvestment Initiative (JRI) is addressed in greater detail in the “Overcrowding” section of this report, and in the JROC Report. (Appendix C, Attachment 12)

¹⁰⁹ Findings of the Justice Program Assessment of Nebraska’s Prisons (Powerpoint presentation); Council of State Governments (CSG) Justice Center (June 21, 2016), page 1. (“JPA Report” – Appendix C, Attachment 13b)

¹¹⁰ JPA Report, page 7. (Appendix C, Attachment 13b)

¹¹¹ JPA Report, page 5 and page 8. (Appendix C, Attachment 13b)

¹¹² Rothwell testimony, 10/28/2016 transcript, page 11. (Appendix B)

¹¹³ JPA Report, page 12. (Appendix C, Attachment 13b)

¹¹⁴ Rothwell testimony, 10/28/2016 transcript, page 13. (Appendix B) Also see JPA Report, page 12. (Appendix C, Attachment 13b)

¹¹⁵ Rothwell testimony, 10/28/2016 transcript, page 12. (Appendix B)

- Approximately 1,400 newly admitted inmates are in need of cognitive-behavioral programming, which equates to 60% of new admissions, according to CSG.¹¹⁶
 - **Finding:** NDCS remains in “triage mode” when it comes to assessment and programming.
 - **Finding:** Failure to use assessment information that is already available, along with delays in implementing the new assessment tool, have prevented NDCS from targeting the right people for programming.

Recommendation 20: The Committee recommends that NDCS conduct assessments of all inmates by July 1, 2017. The Committee recommends that NDCS develop a plan to shorten the timeframe to conduct assessments, as previously recommended by CSG’s Justice Program Assessment. If NDCS is not able to complete initial assessments of all current inmates within the timeframe recommended by the Justice Program Assessment, NDCS should contract with outside providers to complete the assessments.

Recommendation 21: Once assessment is complete, the Committee recommends that NDCS follow CSG’s Justice Program Assessment recommendation to make program assignments based on individual’s risk, needs, and time to parole eligibility.

Access to Programming - Effectiveness of NDCS Programming

- The goal of the second element of the JPA Framework is to “rely on programs with demonstrated impact on recidivism.”¹¹⁷ The goal of the third element is to “ensure programs are implemented with quality and fidelity.”¹¹⁸
- According to the JPA Report, NDCS programs use “leading evidence-based curricula, but often go off script; NDCS needs more programming to address criminal thinking, the top dynamic risk factor for reoffending.”¹¹⁹
- According to the JPA Report, the most effective programs to reduce recidivism use a “cognitive-behavioral approach,” which includes the demonstration of new skills to replace antisocial or maladaptive behaviors. Practicing these new skills is critical to behavior change.¹²⁰

¹¹⁶ JPA Report, page 15. (Appendix C, Attachment 13b) and email correspondence with CSG (11/22/2016): “On page 15 of the [JPA] report, we estimate approximately 1,400 newly admitted individuals will be in need of cognitive-behavioral programming which is around 60% of their admissions. MRT lacks graduated skills practice which is a core component of a cognitive-behavioral based program so we also recommend additional programming geared toward criminal thinking. NDCS has chosen to utilize Thinking for a Change to fill this need and is currently working to increase the availability of that program.”

¹¹⁷ JPA Report, page 5 and page 14. (Appendix C, Attachment 13b)

¹¹⁸ JPA Report, page 5 and page 10. (Appendix C, Attachment 13b)

¹¹⁹ JPA Report, page 15. (Appendix C, Attachment 13b)

¹²⁰ JPA Report, page 15. (Appendix C, Attachment 13b)

- Moral Reconciliation Therapy (MRT) is the primary program NDCS uses to address criminal thinking, but it lacks graduated skills practice, a core cognitive-behavioral component.¹²¹
- According to the JPA report, “NDCS does not currently offer gender-responsive programming that addresses women’s unique path to prison.”¹²²
 - **Finding:** NDCS has quality clinical treatment programs that are based on effective models, but the programs are not always implemented with fidelity to the models.
 - **Finding:** NDCS does not have enough non-clinical programs based on effective models. Some of the non-clinical programs used by the Department, like MRT, are not based on effective models. Effective non-clinical programs - in particular, cognitive-behavioral programs - are dramatically inaccessible to Nebraska inmates.

Recommendation 22: The Committee recommends that NDCS increase access to cognitive-behavioral programming to ensure that it is available to inmates who need it.

Recommendation 23: The Committee recommends that NDCS develop evidence-based gender-specific programming for women.

Access to Programming - Efficiency of NDCS Programming

Timing of Program Delivery

- According to the JPA Report, “NDCS programming is delivered at a very slow speed, the groups often meeting only once a week but spread out over many months or years, which leaves ample room to streamline program delivery.”¹²³
- NDCS officials acknowledge that programming frequency needs to be increased.¹²⁴
- According to the JPA Report, only 170 individuals completed programming to address criminal thinking last year.¹²⁵ According to the Department, 265 individuals successfully completed MRT in FY16;¹²⁶ the program is offered only once a week for an hour.¹²⁷
- According to the Department, in FY 2016, 16 NDCS inmates successfully completed the Violence Reduction Program. Sixteen individuals successfully completed the

¹²¹ JPA Report, page 15. (Appendix C, Attachment 13b) Also see correspondence with CSG, footnote 116.

¹²² JPA Report, page 16. (Appendix C, Attachment 13b)

¹²³ JPA Report, page 17. (Appendix C, Attachment 13b)

¹²⁴ Rothwell testimony, 10/28/2016 transcript, page 86. (Appendix B)

¹²⁵ JPA Report, page 15. (Appendix C, Attachment 13b)

¹²⁶ NDCS Programs List, “Successful Completions FY16” tab. (Appendix C, Attachment 26)

¹²⁷ Rothwell testimony, 10/28/2016 transcript, page 85. (Appendix B)

Department's Domestic Violence program, 19 completed Aggression Replacement Therapy, and 109 completed Anger Management.¹²⁸

- The JPA Report also found that, on average, people wait more than a year to receive programming.¹²⁹

Recommendation 24: The Committee recommends that the Department shorten the timeframe to move people into appropriate programming once assessments are complete.

Parole Eligibility Issues

- According to the JPA Report, "Long delays for both program assessment and delivery prevent inmates from being released by PED [Parole Eligibility Date]." The Board of Parole declined to set a parole hearing for 33 percent of people within a year of their PED because of incomplete programming.¹³⁰
- According to the JPA Report, "Community programs do not adequately meet the needs of people reentering society after being in prison. ... Currently, the Board of Parole is often forced to deny or delay parole to inmates due to long waitlists for prison programming and a lack of adequate options for programming in the community."¹³¹
- According to Parole Board Chair Rosalyn Cotton, there are three "core programs" – if an inmate has a treatment recommendation for one of these programs and does not successfully complete the program prior to his or her PED, that individual will not be released on parole on their PED, and will not be released on parole until the program is successfully completed.¹³² These three "core programs" (1) residential substance abuse treatment, (2) sex offender treatment, and (3) the Violence Reduction Program, are all clinical treatment programs.¹³³

¹²⁸ NDCS Programs List, "Successful Completions FY16" tab. (Appendix C, Attachment 26)

¹²⁹ JPA Report, page 18. (Appendix C, Attachment 13b)

¹³⁰ JPA Report, page 12. (Appendix C, Attachment 13b)

¹³¹ JPA Report, page 18. (Appendix C, Attachment 13b)

¹³² Cotton testimony, 9/30/2016 transcript, page 95, page 105, and page 117. (Appendix B) The term "core programs" was used by Parole Board Chair Rosalyn Cotton at the LR34 Committee hearing on 9/30/2016.

The three "core programs" mentioned by Parole should not be confused with the phrase "core programs" sometimes used by NDCS. [See Rothwell testimony, 10/28/2016 transcript, page 4 and page 23. (Appendix B) - reference to "core programming" - MRT, VRP, T4C, substance abuse treatment, sex offender treatment; also see Frakes testimony, 9/30/2016 transcript, page 182. (Appendix B) - reference to "core programs/three core programs."] The types of programming CSG focused on in the JPA Report are similar to the programs described by NDCS as "core programming." JPA Report, page 5. (Appendix C, Attachment 13b) - "In Nebraska, ... the JPA focused on programs that address criminal thinking, sex offending, substance use disorders, and violence reduction. These programs were selected because they directly target priority risk factors and address some of the most significant public safety threats."

- NDCS and the Parole Board have technical support from CSG to ensure that changes to treatment and programming, which are intended to move people through the system in a way that is more efficient, are also more effective.¹³⁴
- According to testimony heard by the LR34 Committee, NDCS and the Parole Administration are asking for more resources to make sure people get the programming and treatment they need.¹³⁵
 - **Finding:** Delays in program assessment and delivery contribute to people jamming out of prison without supervision.
 - **Finding:** Prior to 2015, NDCS did not have an effective system to ensure program completion ahead of an individual's PED for individuals serving long sentences. Today, the Department is working closely with the Parole Board and Parole Administration to develop a longer-term focus on reducing recidivism, not just a short-term focus on reducing parole revocations.

Recommendation 25: The Committee recommends that NDCS ensure that individuals complete programming and treatment before their Parole Eligibility Date when possible, particularly when statutorily required. NDCS should implement the Justice Program Assessment recommendations to coordinate prison and community-based programming for people who are on post-release supervision and parole.

Statutorily Required Programming

- The Nebraska Treatment and Corrections Act requires the Department to provide substance abuse therapy and psychological treatment to certain individuals prior to the offender's PED.¹³⁶
- Some offenders with short sentences come into the correctional system parole-eligible, making it impossible for the Department to meet the statutory requirement that certain types of treatment be provided prior to the offender's PED.¹³⁷ A recommendation from The Performance Audit Committee Report that the Legislature revise this statutory requirement was not incorporated into any of the recent Legislative reforms.¹³⁸

¹³⁴ Cotton testimony, 9/30/2016 transcript, page 94. (Appendix B) Compare to LR424 Report, page 38. (Appendix C, Attachment 6)

¹³⁵ 9/30/2016 transcript, page 143. (Appendix B)

¹³⁶ Nebraska Revised Statutes, Section 83-1,110.01

¹³⁷ 2014 Performance Audit Report – NDCS, page 35. (Appendix C, Attachment 27) - finding #15 and finding #16

¹³⁸ LB598 (2015), LB605 (2015) and LB1094 (2016).

- **Finding:** The Committee acknowledges that some inmates cannot complete programming prior to their first eligibility date because they are parole eligible the day they are admitted to NDCS custody.

Recommendation 26: As recommended by the 2014 Performance Audit Committee report, the Legislature should revise the statute that requires NDCS to provide certain types of treatment prior to parole eligibility, to account for individuals with short sentences.

Ongoing Barriers to Programming

Staffing

- Staffing needs are a major barrier to programming. The Department does not have appropriate levels of staffing needed to administer programs throughout all the facilities and to build capacity of the programs.¹³⁹ Issues relating to staffing levels and staff training are addressed in greater detail in the “Staffing” section of this report.
 - **Finding:** Staffing issues make it difficult to ensure implementation of programs with fidelity to the programming models.

Recommendation 27: The Committee recommends that the Department establish appropriate levels of staffing as needed to administer programs throughout all the facilities and to build capacity of the programs.

Facility space

- NDCS staff express concern regarding lack of facility space and say “poor building condition and lack of space diminish the ability to offer programming.”¹⁴⁰
 - **Finding:** The 2014 Master Plan did not accurately reflect the Department’s programming needs because the Department did not have an accurate assessment of the facility space needs for programming and assessment when the Master Plan was developed.
 - **Finding:** The Department still does not have a comprehensive measure of NDCS facility space needs for programming and assessment.

Recommendation 28: The Committee recommends that NDCS complete a facilities space analysis for programming and assessment by July 1, 2017.

¹³⁹ OIG Report, page 39. (Appendix C, attachment 2)

¹⁴⁰ NDCS Culture Study - Part 1, page 14. (Appendix C, Attachment 4a)

Program availability system-wide

- Programs are not uniformly available at every institution. Some facilities have certain program access, while others offer different programs regardless of institutional need.¹⁴¹
- The Department does not have a comprehensive list of program availability and program capacity at each facility that is updated on a regular basis.¹⁴²
 - **Finding:** Inmates should be able to access programs they need; they should be housed at an institution that provides the necessary programming, or should be transported to a facility that does provide the programming they need.

Recommendation 29: The Committee recommends that NDCS develop a program access plan by July 1, 2017. The plan should show how core programs will be offered in every institution or how transportation will be provided for inmates to go to facilities that offer core programs.

Funding

Recommendation 30: The Committee recommends that NDCS review the budget request submitted in September to ensure that it accurately reflects the Department's staffing and spacing needs in order to increase programming capacity to inmates.

¹⁴¹ NDCS Programs List (Appendix C, Attachment 26)

¹⁴² Partial lists of NDCS programs, or reasonably comprehensive lists that are not updated on a regular basis:

- NDCS Programs List (Appendix C, Attachment 26)
- OIG Report, pages 261-268. (Appendix C, Attachment 2) - Spreadsheet of programs available at NDCS, Attachment 37 to the OIG Report.
- 2014 NDCS Master Plan, pages B-17 to B-19. (Appendix C, Attachment 16) - Correctional Programs Matrix (by facility), Appendix 10 in the 2014 NDCS Master Plan.
- 2014 Performance Audit Report – NDCS (Appendix C, Attachment 27) - Three sections from the 2014 Performance Audit Report: “Program Inventory” (pages 35-40); “Appendix C: Department of Correctional Services Program & Inmate Club Descriptions” (begins on page 95 of .pdf); and “Appendix D: Administration of Department of Correctional Services’ Programs” (begins on page 103 of the .pdf).

RESTRICTIVE HOUSING

Solitary confinement, also known as restrictive housing or segregation, is essentially a prison within a prison.¹⁴³ The primary issues addressed in this report - staffing, overcrowding, mental and behavioral health treatment, and programming - have contributed to the overuse of solitary confinement in Nebraska prisons. As noted in a report from the Vera Institute regarding the use of restrictive housing in Nebraska, “[e]nding the excessive use of segregation is therefore a major element of these reforms.”¹⁴⁴ The Vera Report is described in greater detail in this section, and is included as an attachment to this document.

LR424 (2014) Committee

- In 2013, a former state inmate committed four homicides within a month of his release from prison. In response, the Legislature created the Department of Correctional Services Special Investigative Committee to examine the circumstances of the inmate’s incarceration and release from prison.¹⁴⁵
- The Committee found that the inmate spent a majority of his 10-year sentence in restrictive housing because he was deemed to be too dangerous to live among the prison’s general population. In the months leading up to his release, he made numerous assurances he would murder if released and made pleas to be sent to the Lincoln Regional Center instead, yet no transitional effort was made that could have given officials time to pursue remedies available to protect the public.
- During the course of its investigation, the LR424 Committee found that Nebraska uses restrictive housing at a high rate relative to other states and that there are grave deficits in how the Department monitors the mental health status of and delivers mental health services to inmates in long term isolation. A major factor driving the use of restrictive housing was the discretion of correctional staff to place inmates in segregation for relatively low level offenses, and a lack of policies requiring correctional administrators to review the status of inmates once segregated.

¹⁴³ The terms “restrictive housing”, “solitary confinement”, and “segregated confinement” or “segregation” are often used interchangeably. The terms “restrictive housing” and “solitary confinement” are defined in statute as follows (Nebraska Revised Statutes, Section 83-170):

(13) Restrictive housing means conditions of confinement that provide limited contact with other offenders, strictly controlled movement while out of cell, and out-of-cell time of less than twenty-four hours per week;

(14) Solitary confinement means the status of confinement of an inmate in an individual cell having solid, soundproof doors and which deprives the inmate of all visual and auditory contact with other persons.

¹⁴⁴ Vera Report, page 16. (Appendix C, Attachment 7) Also see Vera Report page 59, introduction to recommendations.

¹⁴⁵ LR424 Report (Appendix C, Attachment 6)

Vera Report

- Shortly after Director Frakes was hired, he invited the Vera Institute of Justice to help NDCS reduce the use of segregation.¹⁴⁶
- Following a year-long assessment of Nebraska's use of segregation, the Vera Report was released November 1, 2016. This assessment was based primarily on pre-LB598 operations - what restrictive housing looked like in Nebraska from 2013 to 2015.¹⁴⁷
- According to the Vera Report, "[t]here is a lack of sufficient educational, vocational and therapeutic programming available to individuals in NDCS custody, which can lead to idleness and tension between incarcerated people and staff and therefore contribute to the use of segregation."¹⁴⁸
- The Vera Report included recommendations to ensure that "people are not isolated for extended durations with nominal access to congregate activity, programming and services geared toward rehabilitation."¹⁴⁹
 - **Finding:** Many of the issues raised in the LR424 Report are thoroughly analyzed in the Vera Report. Many of the same concerns held by the LR34 Committee and expressed in this report are also addressed in the Vera Report.
 - **Finding:** The Vera Report provides a comprehensive analysis of the use of restrictive housing and its finding and recommendations, based upon the expertise of individuals working in the field, will help further the Department's efforts to reduce the use of segregation.
 - **Finding:** The Vera Report recommendations cannot be implemented without well-trained staff and sufficient programming space.

Restrictive Housing Population in Nebraska, 2013 - 2016

- According to Director Frakes, 6.2 percent of the NDCS population was in restrictive housing on November 16, 2016.¹⁵⁰

¹⁴⁶ Vera Report, page 3. (Appendix C, Attachment 7)

The Vera Institute of Justice is a non-partisan, non-profit, center for justice policy that works with officials at all levels of government on criminal justice reform initiatives.

¹⁴⁷ Vera Report, page 3. (Appendix C, Attachment 7)

¹⁴⁸ Vera Report, page 20. (Appendix C, Attachment 7) Also see Frakes testimony, 8/31/2016 transcript, pages 18-20. (Appendix B)

¹⁴⁹ Vera Report, page 59 (Appendix C, Attachment 7)

¹⁵⁰ Director Frakes comments at Longer-term Restrictive Housing Work Group meeting, November 16, 2016.

- According to a report from NDCS on the use of Longer-term Restrictive Housing, 5.7 percent of the NDCS population was in restrictive housing on July 1, 2016.¹⁵¹
- According to the Vera Report, across the two-year period studied from July 1, 2013 to June 30, 2015, the average daily population in “highly restrictive housing” was 7.2 percent of the total NDCS population.¹⁵²
- Also according to the Vera Report, “[T]he average daily population in any type of restrictive housing was 13.9 percent of the total NDCS population. This proportion is significantly greater than the estimated national average of 5 to 6 percent”.¹⁵³

Statutory Framework

- The Legislature passed LB598 in 2015 to implement many of the LR424 Committee’s recommendations, including a requirement that the Department promulgate rules and regulations governing the use of restrictive housing.
- LB598 provided that “[b]eginning July 1, 2016, no inmate shall be held in restrictive housing unless done in the least restrictive manner consistent with maintaining order in the facility and pursuant to rules and regulations adopted and promulgated by the Department pursuant to the Administrative Procedure Act.”¹⁵⁴
- Further, LB598 required that the rules and regulations establish levels of restrictive housing; establish procedures for making determinations relative to the behavior, conditions, and mental health status under which an inmate may be placed in each confinement level; and provide for individualized transition plans, developed with the active participation of the committed offender, from restrictive housing back into the prison’s general population or back into society.¹⁵⁵

Rules and Regulations

Immediate Segregation and Longer-term Restrictive Housing

- Under newly adopted rules and regulations, there are two types of restrictive housing assignments: Immediate Segregation and Longer-term Restrictive Housing.¹⁵⁶
Immediate Segregation is “a short-term restrictive housing assignment of not more than

¹⁵¹ 9/15/2016 NDCS Restrictive Housing Report, pages 4-5. (Appendix C, Attachment 25)

¹⁵² Vera Report, page 25. (Appendix C, Attachment 7)

¹⁵³ Vera Report, page 25. (Appendix C, Attachment 7)

¹⁵⁴ LB598 (2015), Section 31

¹⁵⁵ Nebraska Revised Statutes, Section 83-173.03

¹⁵⁶ Nebraska Administrative Code, Title 72, Chapter 1 - Restrictive Housing Rules and Regulations (effective July 1, 2016). (“Title 72, Chapter 1” – Appendix C, Attachment 28)

30 days in response to behavior that creates a risk to the inmate, others, or the security of the institution.”¹⁵⁷ Exceptions to this timeframe require the Director’s approval; the maximum length of stay on Immediate Segregation is 60 days.¹⁵⁸ Longer-term Restrictive Housing is “a classification-based restrictive housing assignment of over 30 days.”¹⁵⁹

- Even though Longer-term Restrictive Housing is intended as a classification-based housing assignment to reduce risk, it could still result in an inmate being segregated in an environment that limits out-of-cell time to two hours a day, with little to no access to programming.¹⁶⁰

Disciplinary Segregation

- Because restrictive housing is no longer used as a sanction for misconduct, disciplinary segregation is not mentioned in the new rules and regulations for restrictive housing. As of July 11, 2016, NDCS eliminated the use of Disciplinary Segregation as a sanction for rule violations.¹⁶¹ Although Director Frakes has declared an end to the practice of using Disciplinary Segregation as a sanction for rule violations, the Department has not formally eliminated Disciplinary Segregation by amending the relevant rules and regulations.¹⁶²
- The Vera Report confirmed that Disciplinary Segregation was used excessively in Nebraska prisons; over half of all charges that correctional officers filed were ultimately dismissed following a disciplinary hearing.¹⁶³

Mission Specific Housing

- According to the new rules and regulations, the Department intends to increase the use of “mission specific housing” as an alternative to restrictive housing.¹⁶⁴ Mission specific housing is described in greater detail in the “Mental and Behavioral Health Treatment” section of this report.

¹⁵⁷ Title 72, Chapter 1, Section 002.06. (Appendix C, Attachment 28)

¹⁵⁸ Title 72, Chapter 1, Section 004.04(B). (Appendix C, Attachment 28)

¹⁵⁹ Title 72, Chapter 1, Section 002.07. (Appendix C, Attachment 28)

¹⁶⁰ Vera Report, pages 62-63. (Appendix C, Attachment 7)

¹⁶¹ Frakes testimony, 10/12/2016 transcript, page 92. (Appendix B)

¹⁶² Disciplinary procedures are addressed under a separate set of rules and regulations. Nebraska Administrative Code, Title 68 - Inmate Rules and Regulations. (“Title 68” – Appendix C, Attachment 29)

¹⁶³ Vera Report, pages 39-40 and page 58. (Appendix C, Attachment 7)

¹⁶⁴ Title 72, Chapter 1, Section 003.06. (Appendix C, Attachment 28)

- **Finding:** The intent behind provisions within LB598 relative to restrictive housing was to reform the use of long-term segregation and to provide a method of transitioning inmates from segregation back to the general population before being released back to their communities.
- **Finding:** The Committee supports the Department’s efforts to eliminate the use of Disciplinary Segregation and establish mission specific housing units as an alternative to restrictive housing.

ABA Standards for Long-term Segregated Housing

- Early drafts of the new restrictive housing rules and regulations did not set out specific criteria under which inmates may be placed in restrictive housing, which reflected Director Frakes’ initial opposition to setting out criteria in rules and regulations.¹⁶⁵
- The Ombudsman’s office and Inspector General Koebernick proposed that a set of five objective standards adopted by the American Bar Association (ABA) for placing inmates in restrictive housing be incorporated into the rules and regulations.¹⁶⁶ They also acknowledged that a sixth “catchall” provision may be needed, in addition to the five specific ABA criteria. However, they recommended that the catchall should only be used with the “personal action and approval of the director.”¹⁶⁷
- The promulgated rules and regulations state:
[T]he rationale for placement into restrictive housing shall be documented at the time of initial placement and must be based upon one or more of criteria listed below: (A) A serious act of violent behavior (i.e., assaults or attempted assaults) directed at correctional staff and/or other inmates; (B) A recent escape or attempted escape from

¹⁶⁵ 10/12/2016 transcript, page 106. (Appendix B) The Ombudsman’s office testified at the NDCS hearing on May 9, 2016 regarding the proposed restrictive housing rules and regulations. They provided written comments and three other documents:

- Public Comments on Proposed Regulatory Changes, Title 72 Chapter 1 of the Nebraska Administrative Code; Nebraska Ombudsman’s Office (May 9, 2016). (“5/9/2016 Ombudsman comments on restrictive housing” – Appendix C, Attachment 30a)
- Attachment to Public Comments on Proposed Regulatory Changes; Nebraska Ombudsman’s Office - copy of April 14, 2016 Memorandum to the Legislature’s LR34 Committee, “DCS Proposed Restrictive/Segregated Housing Regulations” (May 9, 2016). (“5/9/2016 Ombudsman attachment - copy of 4/14/2016 memo to LR34 Committee” – Appendix C, Attachment 30b)
- Attachment to Public Comments on Proposed Regulatory Changes; Nebraska Ombudsman’s Office - “Restrictive/Segregated Housing Principles” document (May 9, 2016). (“5/9/2016 Ombudsman attachment - Restrictive Housing Principles” – Appendix C, Attachment 30c)
- Attachment to Public Comments on Proposed Regulatory Changes; Nebraska Ombudsman’s Office - Standard 23-2.6 thru Standard 23-2.9 and Standard 23-3.8 of the ABA Standards on Treatment of Prisoners (May 9, 2016). (“5/9/2016 Ombudsman attachment - ABA Standards” – Appendix C, Attachment 30d)

¹⁶⁶ 10/12/2016 transcript, page 106. (Appendix B)

¹⁶⁷ 5/9/2016 Ombudsman attachment - Restrictive Housing Principles (Appendix C, Attachment 30c)

secure custody; (C) Threats or actions of violence that are likely to destabilize the institutional environment to such a degree that the order and security of the facility is significantly threatened; (D) Active membership in a “security threat group” (prison gang), accompanied by a finding, based on specific and reliable information, that the inmate either has engaged in dangerous or threatening behavior directed by the security threat group or directs the dangerous or threatening behavior of others; (E) The incitement or threats to incite group disturbances in a correctional facility; and (F) *Inmates whose presence in the general population would create a significant risk of physical harm to staff, themselves and/or other inmates.*¹⁶⁸ (Emphasis added - subsection (F) is referred to as “the catchall provision” or “the sixth criteria.”)

- Because the “catchall” provision in the final version of the rules and regulations did not require the Director’s approval, and because of the risk that the “catchall” provision could be overused, the Ombudsman’s office testified at the NDCS rules and regulations hearing in May 2016 that “Section 003.02(F) should be deleted from the proposed regulations.”¹⁶⁹
- The rules and regulations have been in effect since June 2016. According to NDCS records, 42 percent of inmates placed in restrictive housing in the last four months were placed by invoking the criteria from Section 003.02(F).¹⁷⁰
- Director Frakes stated that if the “catchall provision” is still being used in more than 20 percent of the placements in Longer-term Restrictive Housing on July 1, 2017, NDCS will change the rules and regulations to add a requirement that placements under that provision must be approved by the Director.¹⁷¹
 - **Finding:** The “catchall” provision in Section 003.02(F) is being overused.
 - **Finding:** The catchall already requires the Director’s attention on each case in order to sort through ways to reduce its usage.

Recommendation 31: The Committee recommends that the Department strike the “catchall provision” from the restrictive housing rules and regulations by January 1, 2018. Specifically, the Department should strike the language, “Inmates whose presence in the general population would create a significant risk of physical harm to staff, themselves and/or other inmates.” from Title 72, Chapter 1, Section 003.02 of the Nebraska Administrative Code.

¹⁶⁸ Title 72, Chapter 1, Section 003.02. (Appendix C, Attachment 28)

¹⁶⁹ 5/9/2016 Ombudsman comments on restrictive housing (Appendix C, Attachment 30a)

¹⁷⁰ 10/12/2016 transcript, pages 114-115. (Appendix B)

¹⁷¹ 10/12/2016 transcript, page 163. (Appendix B)

Due Process

- The elimination of Disciplinary Segregation means less review and fewer appeal options as a result of placement in restrictive housing.¹⁷²
- Current statutes still require NDCS to promulgate rules and regulations regarding Disciplinary Segregation, to ensure that due process procedures are established and followed.¹⁷³
- The Ombudsman's office recommended changes to the rules and regulations on Longer-Term Restrictive Housing to provide due process protections in situations where a decision is made to place an inmate in restrictive housing for more than 30 days.¹⁷⁴
 - **Finding:** To prevent the over-use of Longer-term Restrictive Housing, an appeals process allowing District Court review of the Department's decision to continue an inmate's assignment to Longer-term Restrictive Housing is necessary.
 - **Finding:** The Legislature should clarify that inmates held in Longer-term Restrictive Housing have a statutorily created right to be held in the least restrictive manner; this right may not be taken away without following minimum appropriate due process procedures.

Recommendation 32: The Committee recommends that NDCS amend Title 72, Chapter 1 to add more due process protections. The rules and regulations should require notice, in writing, of the reasons for assigning an inmate to Longer-term Restrictive Housing, and an administrative hearing where the inmate can be heard in person, and can confront and cross-examine any witness whose testimony is relevant to the case. The Department should schedule a public hearing and submit the proposed revisions to the Secretary of State no later than July 1, 2017.

Recommendation 33: The Committee recommends that the Legislature consider explicitly creating a statutory right to an administrative hearing to review continued assignment to Longer-term Restrictive Housing. The Legislature should also eliminate statutory references to "Disciplinary Segregation."

¹⁷² 10/12/2016 transcript, pages 25-26. (Appendix B)

¹⁷³ Nebraska Revised Statutes, Sections 83-4,111 and 83-4,114.01

¹⁷⁴ 5/9/2016 Ombudsman comments on restrictive housing, page 2. (Appendix C, Attachment 30a)

EPILOGUE

The Legislature, in response to the horrendous and needless murder of four people as a direct consequence of the release of an inmate under highly irregular circumstances, authorized a study of the circumstances of the inmate's release in LR424 (2014). Aided by excellent investigative reporting by regional media, the LR424 Committee was alerted to crisis level malfeasance and neglect in the operation of the Nebraska Department of Correctional Services. Multiple hearings revealed mushrooming inadequacies in staffing, overcrowding, parole, behavioral health, programming, and solitary confinement. The hearings exposed a bureaucratic contagion which impeded decision making, clogged information flow, and promoted an environment of plausible deniability. The initial hearings also revealed that inmate discipline was largely relegated to custodial staff to be administered in a highly discretionary fashion according to improperly promulgated rules or no rules at all. Thoughtful analysis suggested the root cause of the crisis was the inevitable clash of a culture of fiscal austerity with at least two decades statutory changes and judicial decisions intended to get tough on crime through increased use of incarceration.

Subsequent to the LR424 Report, LR34 (2015) was adopted to facilitate further study and oversight of the Department. The results of its continuing mission are laid out in this report and largely confirm the observations of the LR424 Committee, note the new administration's efforts to deal with the ongoing crisis and comply with the initial statutory responses by the Legislature, and acknowledge the perseverance of the many dedicated Corrections employees who daily go above and beyond to enable the continued functioning of a Department most definitely still in crisis.

Much frustration exists with the pace of corrective action and the extended timetable for Departmental rehabilitation, a timetable longer than the time needed to win World War II. Underscoring it all is the sobering reality of the continuing incompatibility of the politics of austerity with the public pressure for use of high cost incarceration as the remedy for multi-rooted social dysfunction. The Legislature has the ability to perform oversight, modify laws, and fund the undertaking, but that ability will stand for naught in the face of a policy that defers spending at the risk of the loss of life or limb by staff, inmates, and the public, as well as the risk of the intervention of the Federal Courts. The acceptance of that risk, or not, is squarely placed by our Constitution within the purview of the executive branch. The LR34 Committee strongly recommends that the executive branch take immediate action.

ATTACHMENTS

APPENDIX A

- Summary of Recommendations from the LR34 Special Investigative Committee for the Department of Correctional Services Committee Report (December 2016)
- Status of Recommendations from the LR424 (2014) Special Investigative Committee for the Department of Correctional Services Committee Report (updated December 2016)

APPENDIX B

- List of 2015 Public Hearings - LR34 (2015) - Special Investigative Committee for the Department of Correctional Services
- List of 2016 Public Hearings - LR34 (2015) - Special Investigative Committee for the Department of Correctional Services
- Hearing Transcripts
 - Judiciary Committee hearing transcript - Frakes confirmation hearing (February 12, 2015)
 - Judiciary Committee hearing transcript - Hastings Regional Center (Hastings, August 12, 2015)
 - Judiciary Committee hearing transcript - LR295 (October 9, 2015)
 - LR34 Committee hearing transcript - staffing, funding (October 23, 2015)
 - LR34 Committee hearing transcript - Audit of the Department of Correctional Services (November 4, 2015)
 - LR34 Committee hearing transcript - Tecumseh riot, Auditor's report, lethal injection drug purchase (November 5, 2015)
 - LR34 Committee hearing transcript - mental health, programming and treatment, funding, follow-up (November 6, 2015)
 - Appropriations and Judiciary Committee joint hearing transcript - NDCS budget (February 25, 2016)
 - LR34 Committee hearing transcript - NDCS update (April 18, 2016)
 - LR34 Committee hearing transcript - Staffing (August 31, 2016)
 - LR34 Committee hearing transcript - Overcrowding, Parole (September 30, 2016)
 - LR34 Committee hearing transcript - Mental and Behavioral Health Treatment, Restrictive Housing (October 12, 2016)
 - LR34 Committee hearing transcript - Programming (October 28, 2016)

APPENDIX C

- ATTACHMENT 1: Documents compiled for the LR34 Committee August 31, 2016 Public Hearing on Protective Services Staffing
- ATTACHMENT 2: Office of Inspector General of the Nebraska Correctional System Report (2015/2016)
- ATTACHMENT 3: Behavioral Health Needs Assessment; Nebraska Department of Correctional Services (December 2015)
- ATTACHMENT 4a: Nebraska Department of Correctional Services Culture Study - Part 1 (May 2016)
- ATTACHMENT 4b: Nebraska Department of Correctional Services Culture Study - Part 2 (May 2016)
- ATTACHMENT 5: Governor Pete Ricketts; Media Advisory; State Employee Union Accepts Governor Ricketts' Proposal for NDCS Salary Increase (November 10, 2016)

- ATTACHMENT 6: LR424 (2014) Special Investigative Committee for the Department of Correctional Services Committee Report (December 15, 2014)
- ATTACHMENT 7: The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Nebraska Department of Correctional Services; Vera Institute of Justice (November 1, 2016)
- ATTACHMENT 8: The Tipping Point, Have Nebraska's Prisons Crossed into Unconstitutional Territory?; American Civil Liberties Union of Nebraska (March 2014)
- ATTACHMENT 9: American Civil Liberties Union (ACLU) of Nebraska; Press Release; ACLU of Nebraska Announces Prison Litigation Advisory Panel (February 12, 2015)
- ATTACHMENT 10: Briefing Book on Selected Issues in Mental Health and Corrections, A Collection and Summary of Research; Disability Rights Nebraska (2014)
- ATTACHMENT 11: Nebraska Justice Reinvestment Approach: Reducing prison overcrowding and expanding probation and parole supervision; Council of State Governments (CSG) Justice Center; (May 2015)
- ATTACHMENT 12: Committee on Justice Reinvestment Oversight Special Committee Report; Nebraska Legislature; Annual Report (2016)
- ATTACHMENT 13(a): Nebraska Justice Program Assessment (JPA) Executive Summary; Council of State Governments (CSG) Justice Center (2016)
- ATTACHMENT 13(b): Findings of the Justice Program Assessment of Nebraska's Prisons (Powerpoint presentation); Council of State Governments (CSG) Justice Center (June 21, 2016)
- ATTACHMENT 14: Nebraska Parole Transition Implementation Plan, William D. Burrell (June 1, 2016)
- ATTACHMENT 15: Board of Parole Budget Request Summary for FY2017/18 and FY2018/19; Legislative Fiscal Office, (2016)
- ATTACHMENT 16: Nebraska Department of Correctional Services 2014 Master Plan Final Report; Dewberry Architects Inc (October 27, 2014)
- ATTACHMENT 17: NDCS Data Sheets (2006 - 2016)
- ATTACHMENT 18: Strategic Capital Facilities Master Plan, Prepared for the Nebraska Department Correctional Services Executive Steering Council; Carter Goble Lee in association with DLR Group (October 2006)
- ATTACHMENT 19: Budget Summary for FY2017/18 and FY2018/19; Nebraska Department of Correctional Services (2016)
- ATTACHMENT 20a: NDCS Reception and Treatment Center (RTC) Program Statement, Final Report (April 2015)
- ATTACHMENT 20b: NDCS Reception and Treatment Center (RTC) Program Statement, Update and Phase One Executive Summary Report (August 31, 2016)
- ATTACHMENT 21: Justice Reinvestment Working Group presentation, Second Meeting (Powerpoint presentation); Council of State Governments (CSG) Justice Center (August 26, 2014)
- ATTACHMENT 22: Mental Health System Consultation; Nebraska Department of Correctional Services; Bruce C. Gage, M.D. (July 6, 2016)
- ATTACHMENT 23: Documents compiled for the LR34 Committee October 12, 2016 Public Hearing on Behavioral Health and Restrictive Housing
- ATTACHMENT 24: Report of the Mental and Behavioral Health Task Force (December 1, 2016)
- ATTACHMENT 25: 2016 Restrictive Housing Annual Report; Nebraska Department of Correctional Services (September 15, 2016)
- ATTACHMENT 26: "Programs List for Legislature" spreadsheet from NDCS Deputy Director Mike Rothwell (December 2, 2016)

- ATTACHMENT 27: Nebraska Department of Correctional Services; Disciplinary Process, Programs, and Commitment Processes; Performance Audit Committee, Nebraska Legislature (November 2014)
- ATTACHMENT 28: Nebraska Administrative Code, Title 72, Chapter 1 - Restrictive Housing Rules and Regulations (effective July 1, 2016)
- ATTACHMENT 29: Nebraska Administrative Code, Title 68 - Inmate Rules and Regulations
- ATTACHMENT 30a: Public Comments on Proposed Regulatory Changes, Title 72 Chapter 1 of the Nebraska Administrative Code; Nebraska Ombudsman's Office (May 9, 2016)
- ATTACHMENT 30b: Attachment to Public Comments on Proposed Regulatory Changes; Nebraska Ombudsman's Office - copy of April 14, 2016 Memorandum to the Legislature's LR 34 Committee, "DCS Proposed Restrictive/Segregated Housing Regulations" (May 9, 2016)
- ATTACHMENT 30c: Attachment to Public Comments on Proposed Regulatory Changes; Nebraska Ombudsman's Office - "Restrictive/Segregated Housing Principles" document (May 9, 2016)
- ATTACHMENT 30d: Attachment to Public Comments on Proposed Regulatory Changes; Nebraska Ombudsman's Office - Standard 23-2.6 thru Standard 23-2.9 and Standard 23-3.8 of the ABA Standards on Treatment of Prisoners (May 9, 2016)

APPENDIX D

- Nebraska Administrative Procedure Act: Review of Selected Agencies and Best Practices; Performance Audit Committee, Nebraska Legislature (September 2015)
- NDCS Long-Term Plan for the Use of Restrictive Housing; Nebraska Department of Correctional Services (June 30, 2016)
- Update regarding NIC Recommendations on Sentence Calculation; Nebraska Department of Correctional Services (July 14, 2016)
- Public Comments on Proposed Regulatory Changes - Inmate Disciplinary Procedures, Title 68, Chapter 6 of the Nebraska Administrative Code; Nebraska Ombudsman's Office (August 26, 2016)
- Nebraska Department of Correctional Services; Press Release; Implementation of Sentence Automation Software Announced (September 21, 2016)
- Public Comments on Proposed Regulatory Changes - Mental Health Screening, Risk Assessment, and Discharge Review Team Procedures, Title 72, Chapter 4 of the Nebraska Administrative Code; Nebraska Ombudsman's Office (November 14, 2016)
- Public Comments on Proposed Regulatory Changes - Medicaid Suspension, Title 72, Chapter 5 of the Nebraska Administrative Code; Nebraska Ombudsman's Office (November 14, 2016)
- Doug Koebernick, Office of Inspector General of Corrections; Memorandum to the Legislature's LR 34 Committee, "TSCI Update" (December 1, 2016)
- Nebraska Department of Correctional Services; Press Release; Two Inmates Released on Parole Incorrectly (December 3, 2016)